

# The Insider Online

VOICES OF CALIFORNIA'S CIVIL DETAINEES AT COALINGA STATE HOSPITAL

FEBRUARY 2011

## **PUNISH ALL** **INSTEAD OF ONE?**

William Hester, Editor

Once again we are faced with the never changing policy of the Department of Mental Health to punish everyone when something occurs, instead of addressing the problem with the individual(s) actually involved.

Unit 17 was searched on January 20 *in retaliation* for a patient destroying property on the unit. You might ask how I know that it was in retaliation? What makes me think that the professional staff here would do such a thing? Simple, the staff on Unit 17 informed the unit that it was searched because the mirrors and fire lights were broken and that if they get broken again, the unit will get searched again. This is just another example of how the Administration here claims to be interested in a "Therapeutic Environment," but will immediately sacrifice this supposed ideal for a chance to make our lives inconvenient or downright miserable.

What possible justification is there in threatening an entire unit with retaliation for something happening, when it is the staff who are responsible for ensuring that this is a safe and secure environment for all of us.

I would suggest that it is the duty of the Administration and their staff to seek out a means of resolving issues that does not involve threats, punitive actions, and harassment of our entire population. Perhaps embracing the idea of that "Therapeutic Environment" they seem to hold so dear would enable them to find more appropriate and moderate responses to the various issues that are raised here.

Conversation with the patient population and realistic discussions on problem solving would work better than threats and mistreatment. Something the Administration might want to think about when they stand up our representatives for their monthly meetings.

## **February is *Black History Month***

In 1926 African American scholar Carter Godwin Woodson organized the first Negro History week, to focus attention on previously neglected aspects of the black experience in the United States. Woodson chose February to coincide with the birthdays of Frederick Douglass and Abraham Lincoln, as well as the anniversary of the founding of the NAACP. Renamed Black History Week in 1972, the observance was extended to become Black History Month in 1976. During February, lectures, exhibitions, banquets, cultural events, and television and radio programming celebrate the achievements of African Americans. Since 1978 the U.S. Postal Service has participated in Black History Month by issuing commemorative stamps honoring notable African Americans.

## **CONFIRMATION BIAS IN SVP EVALUATIONS**

*By William Stephenson*

This piece was inspired by an article from Scientific America.

It is very likely that the state evaluators, both for commitment (court) and WIC 6605 evaluations, clinical administration and the DMH itself are being swayed in their conclusions, policies, etc. by "confirmation bias"—the tendency to look for and perceive evidence consistent with one's hypothesis and to deny, dismiss or distort evidence that is not.

Research in cognitive, clinical and social psychology indicates strongly that confirmation bias is more prevalent than one might suspect. The tendency to be influenced by it is exhibited in the work of even the brightest of scientists, this influence is amplified by the ambiguity of the data and the emotional attachment the scientist (or psychologist) has to his/her hypothesis (opinion).

Think of it this way, a baseball manager and an umpire can argue all sides of a close call but there is no argument when the call is clear-cut. So saying, professionals in those areas, such as psychology, where they are called upon to make close calls using data that are open to many interpretations (Static-99R and it's multi-tiers), are especially prone to bias.

While obviously not true in all cases, it would appear that bias becomes most entrenched in those professionals who are eminent in their respective fields, their arrogance and confidence levels tend to be elevated over those of their peers which makes them prone to confirmation bias and wrong-headed conclusions.

No less a contributor to the uphill battle against confirmation bias are the pressures put upon the researchers to conduct single hypothesis-driven work hugely funded by Government grants. Under these circumstances it is easy to see how one could be "motivated" to disregard or selectively reinterpret negative results that could doom their careers and/or funding (Hansen and the

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*The Insider* is dedicated to fair, unbiased and impartial reporting of information, current events, and news that is of interest to civil detainees and others who are interested in finding out about the real people here. Any questions and correspondence can be submitted by mail to:

William Hester  
CO# 532-2 / Unit 4  
P.O. Box 5003  
Coalinga, CA 93210

## The View from the Editor's Seat

What? It can't be that time again already. I just wrote the last View the other day. Didn't I? Hello and welcome back. It seems like only yesterday (literally) that I sat down to write the last session of The View From The Editor's Seat. My new job has introduced me to the idea of living in a world where everyone considers everything a world ending crisis and expects you to pull a miracle solution out of your hat at a moments notice. I have also learned that, unlike when I was younger, I don't have to be the one to solve the problem. I just have to know who to direct people to so they can get the problem solved. It makes for interesting and sometimes challenging work and I think it will prove educational to see how things work out.

With that said, lets move on to today's issues. It seems that no matter how hard we try to work with the Administration around here nothing lasting ever seems to get done. Your CDAC Representatives on all levels are putting hours of work into researching various issues that have been presented. Yet, your living conditions continue to deteriorate. CDAC has presented many issues to the Administration (most of which get denied) and is constantly left hanging around (often for months) waiting for the Administration to grace them with responses to what we as a population consider important matters.

More often than you would like to believe, we are told that various matters can not be fixed because there is no money available. Sometimes the problem stems from something as simple as a staff member interfering in an issue that has be resolved and causing problems (mainly because they want control over everything). If anyone doubts this, just look at the mess CPS is making of the PCLS Pizza Sale. They want to enforce an Administrative Directive that their own staff ignore everyday (the one regarding the movement of prepared foods through the hallways to various locations without food clearance). I don't see Linda Clark out there stopping staff from bringing their donuts, pizza, and homemade foods through the halls. No, it only became an issue when it had to do with patients enjoying something as simple as being able to take their pizzas to their units or the yard and enjoy them with friends.

This hospital needs to get off of its collective \*\*\*\*\* and start showing some consistency in its behavior. If it is O.K. for staff to move food through the halls, then it is O.K. for us to do it. If this is supposed to be an environment that encourages us to overcome our empathy deficiencies and develop better relationship skills, then stop preventing us from being able to live with who we choose, visiting who we want, having places to gather and spend time together, make areas available on holidays (all day) for us to have things to do, and get us a bigger yard to spend time in (or barring that, open all interior facing sports yard full time).

We all know that this law is a lie. This isn't about helping us improve our lives or getting us ready to return to society. We all know from listening to the laws being made and proposed that this is a thinly veiled means of extending our prison sentence and keeping us off the streets.

Listen up! This is directed to all the staff that work for DMH and call themselves professionals and claim to have any form of integrity. You are working for a department that wants to have the same ability to punish as the California Department of Corrections and Rehabilitation. This law is not now, nor has it ever been about rehabilitation or treatment. This place is nothing more than a holding facility. If you don't believe me, look around. The APA won't endorse this law and actually spoke out against it. The majority of patients here aren't in any form of treatment because there is no proven benefit in participation (other than having facilitators and others DMH staff come to your trial and say that you are "doing well in treatment, however, I believe that he will only be safe to release after completing all five phases of treatment."). Great! For those of you who have another ten to thirty years to work through treatment; good luck.

To those of you in this commitment I have this to say: lawmakers and DMH have nothing to gain from letting you out of here. Take the groups that you believe will help you as a person and hope that you get a jury that accepts that as proof of change.

*William Hester, Editor*

## CONFIRMATION BIAS IN SVP EVALUATIONS (CONTINUED FROM PAGE 1)

Static-99 team). Deserving of no less mention is the pressure on the individual evaluators to be perceived by their employers as supportive of the system put in place by the state.

The veracity of scientific findings is called into question whenever the “professionals” see themselves as invulnerable to error, but in the arena of forensic psychology, as applied to involuntary commitment, where an individual’s liberty hangs in the balance, the very foundation of our country (i.e., freedom) is shaken to its core.

The very building blocks of forensic evaluations, and psychological research, hinges on the willingness of the mental health professional to entertain the possibility that they might be wrong (i.e., you’re a false positive).

Good scientists, behavioral or otherwise, are not immune from confirmation bias—but they must be ever aware of it and vigilantly avail themselves of procedural safeguards against its destructive effects.

MDO [Mentally Disordered Offender] Welfare & Institutions Code 2972

## Thumb Drive Victory

*By Derek Luers*

On Wednesday 1/12/11 I found out that I won my issue about having my treatment thumb drive on me at all times and little wins like this can keep me floating on cloud nine for three days at least and for me that is a very good thing. Even though I do not enjoy fighting up-hill battles but it is all worth being proactive in my treatment. Now I have moved on to my next couple of up-hill battles. I will not tell you what they are until I know what their outcome will be. All I can say on the issues at hand will be up-hill battles with the Program Office for Program #8 and up front.

I would like to thank all of the clinical staff on Unit 27, Alvin the am shift lead on Unit 27, Joel Castaneda for both of these gentlemen E-mailed Dr. Greer to see if she would be willing to set an appointment to talk with me and Dr. Virginia Greer Senior Psychologist. She took the time to hear me out on my complaint about not being allowed to have my thumb drive and Dr. Greer said she would see what she could do to help. I also want to thank all the individuals that put up with hearing me crying and complaining about that they would not allow me to have my treatment thumb drive on me so I could do my treatment. The individuals are as follows: 1. Norman Bell & D.J. both on unit 13, Bill Hester, Doug Gaines and Peter Tolles from unit 4, Tex & Tilly from unit 1, Write and Griffith from unit 27, David Hernandez from unit 18, Joe and all the other individuals that I may be forgetting.

All the individuals that allowed me to vent, gave me support during this time it was greatly appreciated and this also goes for staff as well. As individuals, sometimes we lose sight that there are some staff that work here at CSH that really do care about us and what we go through living here and they are not just here for the paycheck.

### MDO SEX OFFENDER LAB TIMES

By Robert Wright

The MDO Sex Offender Treatment computer lab is only open for one hour one day each week and two evenings (Tuesday and Thursday) for an hour and fifteen minutes. In order to do the treatment work, the lab needs to be available every day so that participants can get their work done. Currently, the lab hours as scheduled cross into other groups and hospital wide activities forcing a choice between giving up other groups and recreation in favor of gaining access to the computers for a short time.

It is this writer’s opinion that the MDO Sex Offenders need to have better access to the computer lab. Adding daily hours and including staff familiar with our group work (which is the same as the SOCP). We also are currently required to be enrolled in a one hour morning lab, just like it is a group. This is not how things need to be done.

This is this writers opinion.

## WHAT DO YOU THINK?

Since, in the main, it is not armaments that cause wars but wars (or the fears thereof) that cause armaments, it follows that every nation will at every moment strive to keep its armament in an efficient state as required by its fear, otherwise styled security.

*Salvador de Madariaga 1886-1978*  
‘Morning Without Noon’ (1974) pt. 1, ch. 9  
[EMHPASIS ADDED BY THE EDITOR]

**Reasonable Requests? Hear Administration’s Answers!**

**By Douglas Gaines**

**Color Printing Services**

Mr. Jim Clark emphasized that the expenditure of the initial cost of the equipment would require justification (presumably by a projection of frequency of use by staff and individuals). Additionally, individuals would incur a cost increase. The copy Center will be moved to the package room soon. Finally, he pointed out that Regulation 4350 (the electronics issue) may have a “different determination” on everything.

**Safety /Craft Scissors:**

CSH Administration has reviewed the recommendations of the Contraband Committee as well as the documentation submitted by the CDAC. CSH is in support of the Contraband Committee recommendation and is not in favor of amending policy for individuals’ use of scissors at this time.

**Personal Socks and Underwear**

CSH Administration has reviewed the request for the individuals to purchase and possess their own socks and underwear. Other DMH facilities do allow these items with specific limitations on color, material and amount. The facilities that allow these items are equipped with washers and dryers on the residential units. CSH does not have the ability to launder the residents personal clothing; therefore CSH is not in favor of approving this request.

**Eyeglass Repair Kit**

CSH Administration has reviewed the recommendation of the Contraband Committee as well as the documentations submitted by the CDAC. CSH is in support of the Contraband Committee recommendation and is not in favor of amending the policy for individuals’ use/possession of eyeglass repair kits at this time.

**Sewing Kits**

CSH Administration has reviewed the recommendation of the Contraband Committee as well as the documentations submitted by the CDAC. CSH is in support of the Contraband Committee recommendation and is not in favor of amending the policy for individuals’ use/possession of sewing kits at this time.

**Hairbrushes with handles up to 7 inches**

CSH Administration has reviewed the recommendation of the Contraband Committee as well as the documentations submitted by the CDAC. CSH is in support of this request. A memorandum reflecting the approval of hairbrushes with handles up to 7 inches will be provided to the Chief of DPS for dissemination to the Property Room officers.

**Expansion of Existing Satellite Television System**

CSH has previously investigated and determined that the expansion of the existing satellite television system is not economically feasible. If future patient fundraising activities and Canteen operations are successful in generating sufficient profit to fund and support this venture, this proposal may be reconsidered at that time.

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**HISTORICAL NOTE – 1991 DESERT STORM LAND OFFENSIVE**

On February 24 the coalition launched its long-anticipated land offensive. The bulk of the attack was in southwestern Iraq, where coalition forces first moved north, then turned east toward the Iraqi port of Al Başrah. This maneuver surrounded Kuwait, encircling the Iraqi forces there and in southern Iraq, and allowed coalition forces (mainly Arab) to move up the coast and take Kuwait city. Some Iraqi units resisted, but the coalition offensive advanced more quickly than anticipated. Thousands of Iraqi troops surrendered. Others deserted. Iraq then focused its efforts on withdrawing its elite units and sabotaging Kuwaiti infrastructure and industry. Many oil wells were set on fire, creating huge oil lakes, thick black smoke, and other environmental damage. Two days after the ground war began, Iraq announced it was leaving Kuwait.

On February 28, with the collapse of Iraqi resistance and the recapture of Kuwait—thereby fulfilling the coalition’s stated goals—the coalition declared a cease-fire. The land war had lasted precisely 100 hours. The cease-fire came shortly before coalition forces would have surrounded Iraqi forces. On March 2 the UN Security Council issued a resolution laying down the conditions for the cease-fire, which were accepted by Iraq in a meeting of military commanders on March 3. More extensive aims, such as overthrowing the Iraqi government or destroying Iraqi forces, did not have the support of all coalition members. Most Arab members, for example, believed the war was fought to restore one Arab country and not to destroy another. The United States also worried that extending the goal would have involved them in endless fighting.

# Legal News \* Legal News \* Legal News

By: Steven Force

I've been asked to update the readers of the Insider on the latest news from the legal front regarding the writ that I have currently pending in the federal court for appointment of counsel overseeing indefinite detainees under the SVP Act. A recap of the issue may be necessary to remind the reader why (I believe) appointment of legal counsel overseeing our indefinite commitments is so vital.

I initially filed a habeas corpus writ in December of 2009 (after exhausting state court remedies of course) requesting appointment of legal counsel overseeing my indefinite commitment to the Department of Mental Health (DMH) in 2007. When I read the amended statute in 2008 after receiving my first annual report, I was flabbergasted that the Legislature had neglected to include a provision for legal counsel overseeing indefinite committees under the SVP Act.

Furthermore, I became very concerned that as indefinite committees we are tasked with drafting our own legal briefs when requesting a "show cause" hearing for either conditional release or unconditional discharge from custody when the Department of Mental Health does not advocate for our release. (The DMH has never filed for a judicial writ advocating for anyone's release in the 15 years this law has been in existence. Go figure eh! (Cf., WIC §§6605,(a),(f), and 6607,(a)).

The newly revised SVP Law mandates that annually, at least yearly, a qualified expert of the Departments' own choosing evaluates each of us indefinitely detained committees to determine whether: (1) our condition has so changed that we no longer meet the definition of a sexually violent predator, or (2) conditional release to a less restrictive alternative is in the best interest of us and conditions can be imposed that adequately protect the community. (§6605,(a), & (b).)

Interestingly, I noted that under the newly revised SVP Law when an expert evaluates us at CSH the annual report must be certified and sent to the court having jurisdiction over the case. A copy is also mandated to be served on the District

Attorney's Office in the County domicile, and a copy must be also be served upon the detainee. The statute is silent as to retained or appointed legal counsel receiving a certified copy.

On a side note, recently the hospital has taken a stance to not serve a copy of their annual report on the patient, but instead simply file the report in his cart, mandating him to request a chart review to read it, or pay for a copy. The hospital is in violation of the statute, and it is currently being contested by a friend of mine.

Back to the issue of appointment of counsel. What was lacking, and what I saw as a huge due process problem, was that a copy of the annual report is not being served upon legal counsel representing indefinite committees so a professional attorney can: (1) check the annual reports for material legal error (*Ghilotti*); (2) procure experts to evaluate the committee to bolster favorable petition/motions for release or discharge from custody; or (3) file any necessary petition/motion for release or discharge from custody for their clients.

I was encouraged that I might eventually win this important legal fight when I read the California Supreme Court's ruling in the *McKee* case in January of 2010. Of course, by January 2010 I already had filed and exhausted my appointment of counsel argument in the state courts and had filed my opening writ in the federal court.

Many fellow patients read *McKee* and they only latched onto the equal protection claim as having any real merit. I did not limit my reading of *McKee* so narrowly. In fact, if you go back and read *McKee* you'll find a section entitled a "Due Process Claim" (47 Cal.4th 1172, 1188-1193) which allows indefinitely detained SVPs to petition the court at the annual evaluation stage for appointment of a defense expert/evaluator -- to be paid for at state expense. (Cf. 47 Cal4th @ pgs.

1192-1193.)

What I still find amazing though, (and which wasn't fully developed in the *McKee* case) is the question of just how an indefinitely committed mental health patient under the SVPA is to obtain appointment of a qualified expert to evaluate him *if* he doesn't have legal counsel to assist him in this daunting task.

Remember, when indefinitely committed SVPs petition the court for either conditional release or unconditional discharge (without the concurrence of the DMH-§6608,(a)) we must first get by the gate-keeping provision of the SVP Act of frivolousness, and furthermore, we must draft the pleadings to the courts ourselves. As I first envisioned it, this is potentially a big due process problem with the newly revised SVP law.

It just so happens that my original concept of requesting the appointment of legal counsel overseeing indefinite commitments fits squarely into the similar due process argument that *McKee* presented and won in the California Supreme Court.

In fact, ironically, *McKee* had successfully argued that the newly revised SVP Act's silence regarding the appointment of defense experts within §6608,(a) (when DMH does not recommend release) should not serve as an judicial obstacle especially where §6605,(d) allowed for defense experts, (when DMH advocates for release) because, as the Supreme Court stated, this would "indeed raise a serious due process concern" (47 Cal.4th @ pg. 1192) if an indigent SVP where foreclosed from obtaining a defense expert.

My appointment of counsel argument is the flip side of the coin of the *McKee* issue. WIC §6605,(a)'s silence as to the *appointment of legal counsel* (I argue) raises serious due process concerns when §§6607,(a), and 6608,(a) provides for the *appointment of legal counsel* -- after a **CONCLUDED ON NEXT PAGE**

## LEGAL NEWS - FEBRUARY EDITION

Re: Milinich Gets Relief in the Federal Court

By Steven Force

As previously addressed Jeffery Milinich from Santa Clara County filed a federal habeas corpus in the Northern District Court, San Francisco Division, (*Milinich v. Ahlin*) addressing several constitutional challenges to his indeterminate civil commitment of October 2006.

Amongst his constitutional claims Milinich incorporated an equal protection challenge which the Sixth Appellate Court had previously addressed, and had originally found constitutional on January 28, 2009. The California Supreme Court had further denied review of Milinich's equal protection claim on April 01, 2009.

Milinich initially filed his federal habeas corpus in June of 2009. Milinich was granted an Order to Show Cause (OSC) in the federal court in early January 2010, fifteen days previous to the McKee ruling on his similar equal protection claim.

Milinich successfully argued, as McKee had successfully argued, that the newly amended SVP Act treats SVP civilly detainees more harshly than other similarly situated civilly detainees who are categorized as Mentally Disordered Offenders (MDOs) and Not Guilty by reason of Insanity (NGI) detainees by placing harsher restrictions upon SVPs in gaining freedom from confinement.

In law this is called "a fortiori" or, an inference that because a conclusion is true (McKee's equal protection analysis) then the same reasoning makes it even more certain that the second conclusion (Milinich's equal protection analysis) is also true.

In other words, the timing of the intervening change announced in McKee by the California Supreme Court cast Milinich's equal protection claim in a fundamentally different light necessitating the federal court to stay his federal habeas corpus proceeding, -- granting Milinich leave to file a state habeas corpus in light of McKee's ruling.

Fundamentally, the federal court in Milinich ruled that it was best that the state court(s) have a first shot at looking anew at Milinich's equal protection claim before the federal court ruled. This legally is called comity, or a rule of courtesy by which one court defers to the jurisdiction of another, a long-standing policy against federal court interference with ongoing state court proceedings.

Milinich has indeed subsequently filed his state habeas corpus in the Santa Clara Superior Court pursuant to the federal court's order. He anticipates that the state superior court will do one of three things with his state habeas corpus.

(1) Deny (without prejudice) habeas corpus, and request Milinich file in the Sixth Appellate Court -- the court which initially denied his equal protection claim;

(2) Order the habeas corpus stayed pending full resolution of McKee; or

(3) Order an evidentiary hearing on the equal protection claim in light of McKee.

According to state habeas corpus court rules the court has 60 days in which to respond to Milinich's equal protection claim. However, Milinich anticipates that the court will act before the 60 day window.

Why is Milinich's case so important? There exists a window, or gap of indeterminately committed SVP detainees who missed out on the intervening McKee equal protection ruling.

Milinich is also fascinating for the following reason. As most of you know, McKee is now in state prison doing a life sentence for killing (our friend) Paul "Shaky" Real while housed at Atascadero State Hospital pursuant to the SVP Act.

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### **LEGAL NEWS CONTINUED FROM PREVIOUS PAGE**

court sets a hearing on a release or discharge petition. Why not appoint legal counsel before the show-cause hearing to determine whether a patient has merit in receiving a hearing on a release/discharge petition? Wouldn't appointment of counsel assist the court in weeding-out worthy petitions from frivolous petitions saving valuable judicial resources?

Where does the appointment of legal counsel overseeing my case stand today? Since the writ was filed in the federal court in December of 2009, it is noteworthy to point-out that I had initially received a show-cause order within three days. That's very seldom accomplished.

The Attorney General had initially argued (unsuccessfully) that the *Younger Abstention Rule* applied to my habeas corpus petition because I had a pending appeal still outstanding on my involuntary civil commitment in the California Supreme Court behind the *McKee*

### **THE INSIDER ONLINE EDITOR'S**

**NOTE: The editor and staff of *The Insider* would like to thank the many members of our commitment who spend long hours of their own time researching and fighting for our rights. Whether the fight is for what we are allowed to have while we're held here or for our freedom; Thank You, for all of your hard work and dedication.**

### **law and order**

Strict enforcement of laws, especially for controlling crime. For example, Our candidate is always talking about law and order. The concept behind this term was stated by Aristotle.

Today, however, it also carries the implication of infringing on civil rights in the course of too arduous law

enforcement. [Late 1500s]

Excerpt from *The American Heritage® Dictionary of Idioms* (Emphasis added by the Editor)

**LEGAL NEWS – FEBRUARY EDITION CONTINUED  
FROM PREVIOUS PAGE**

It is surmised that at some point the California State Attorney General's office may point McKee's unique situation out to the courts (i.e., he is no longer an SVP), thus, the battle over mootness or over fundamental jurisdiction of the court may rear its ugly head in the McKee equal protection war.

The Milinich decision is the first federal court to date, that I am aware of, to acknowledge that an equal protection claim is valid, and thus has subsequently held Milinich's federal case in abeyance (stayed) pending resolution of the McKee case.

Imagine *if* McKee is "moot" because he is now in prison serving a life term, or that the San Diego Superior Court lacks "fundamental jurisdiction" over the case because of his prison status.

Would the Milinich case be the next case in the queue? Remember, technically, Milinich's case is still pending (albeit stayed) in the federal court. If the McKee case is ruled "moot" then Milinich's federal case could become the leading case on the equal protection claim. Envision, if you will, the federal court having a hearing on the equal protection claim instead of the state court.

One further note! I am requesting that those indeterminately committed SVP patients presently outside of McKee's announced equal protection rule -- do not come running to me requesting assistance in filing habeas corpus for you just yet. I rather suggest that we wait until Milinich's case exhausts itself in the state court.

That being said, I anticipate that Milinich will have to file a secondary habeas corpus writ in the Sixth Appellate Court -- since the Sixth Appellate Court is the court which incorrectly decided the equal protection issue initially -- before a published ruling of state-wide implementation may issue in Milinich.

The McKee case certainly will not be final by any means in the interim while Milinich's case is pending resolution on his equal protection claim. A published State Appellate court ruling (in Milinich) would certainly suffice those SVP detainees who missed out on the McKee equal protection rule and they could then successfully utilize Milinich to attack their indeterminate commitment viz an equal protection claim. I'll keep you posted on any new news in the Milinich case as it becomes available.

## **STATE HOSPITALS ARE NOT CORRECTIONAL FACILITIES NOR ARE THE RESIDENTS INMATES OR PRISONERS**

Submitted by: Cory Hoch

This document is being used to address the fact that individuals currently residing at any state hospital under the jurisdiction of the California Department of Mental Health (DMH) are not to be classified as prisoners or as inmates of an institution, whether publicly funded or not. Additionally, the facility itself shall not be classified neither as a prison or an institution.

Patients are all purely civil commitment patients. Being so deemed by the Federal Courts, all patients here shall be afforded "more considerate treatment and conditions of confinement than that of their criminal counterparts whose conditions of confinement are designed to punish".<sup>[1]</sup> Patients that are housed in state mental hospitals are not to be considered as inmates or prisoners.<sup>[2]</sup>

Under section 50052 of 22 CCR Public Institution means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. Excluded from this definition are medical facilities and publicly operated community residences designed to serve and serving more than sixteen persons.

The law is well-established that mental health patients confined in state hospitals are to be afforded and are entitled to "more considerate treatment and conditions of confinement than criminals" and that they shall have the least restrictive setting or environment feasible; especially one that is providing adequate care, treatment, and habilitation that is compliant with that class of persons' personal, civil and constitutional rights, privileges and immunities as well as those for each individual, as afforded to them by law. Patients should not be subjected to any hardship except those absolutely requisite for purpose of confinement only, and they retain all rights of an ordinary citizen except the right to go and come as they please.<sup>[3]</sup> A person is entitled to all civil rights when there is no final or pending judgment of conviction against him or her.<sup>[4]</sup> An opinion from the Office of the Attorney General (Opinion Number 79-313, dated May 18, 1979) makes a clear point regarding a state hospital, especially one that has a lot of characteristics of a prison and even houses mentally ill prisoners.<sup>[5]</sup> A person admitted to a program or facility for the purpose of receiving mental health services, especially one who is involuntarily committed to a state hospital, should be accorded the rights and privileges that are "at least as great" as the 8th Amendment protections available to prisoners.<sup>[6]</sup>

***All footnotes related to this article appear on page 8. Any questions related to this material should be addressed to The Insider Outreach c/o Cory Hoch at the address given on page 2.***

*STATE HOSPITALS continued from Page 7*

[1] **Hydrick v. Hunter** (9<sup>th</sup> Cir. 2007) 500 F.3d 978, 989, 1002. They additionally have the right to the "least restrictive" conditions, environment and placement (**Foy v. Greenblott** (1983) 190 Cal.Rptr. 84, 90-91, fn.2, 141 Cal.App.3d 1, 10-11

[2] **Turay v. Seling** (W.D.Wash. 2000) 108 F.Supp.2d 1148, 1151 ("although confined, they are not 'prisoners'"); **Carnell v. Grimm** (9<sup>th</sup> Cir. 1996) 74 F.3d 977, 979 (pretrial detainees are not convicted prisoners); **Page v. Torrey** (9<sup>th</sup> Cir. 2000) 201 F.3d 1136, 1139 (person was a 'prisoner' for purposes of the PLRA when he served time for past convictions, he ceased being a 'prisoner' at the time he was released on parole; only an individual who, at the time he seeks to file a civil action, is detained as a result of being accused of, convicted of, or sentenced for criminal offenses is a 'prisoner' within meaning of PLRA); **Andrews v. King** (9<sup>th</sup> Cir. 2005) 398 F.3d 1113, 1122 (a civil detainee is not a 'prisoner' within the meaning of the PLRA); W&IC § 4132 (mentally disordered persons are to be regarded as patients to be provided care and treatment and not as inmates of institutions); W&IC § 6250 (persons subject to judicial commitment includes those civilly committed and are to be treated, not as criminals, but as sick persons)

[3] **Youngberg v. Romeo** (1983) 457 U.S. at 321-22, 102 S.Ct. 2452; **Jones v. Blanas** (9<sup>th</sup> Cir. 2004) 393 F.3d 918, 932; **Hydrick v. Hunter, supra** 393 F.3d 978; **Padilla v. Yoo** (N.D.Cal. 2009) 633 F.Supp.2d 1005); **Dillard v. Pitchess** (C.D.Cal. 1975) 399 F.Supp. 1225 (pretrial detainees are not to be subjected to any hardship except those absolutely requisite for purpose of confinement only, and they retain all rights of an ordinary citizen except the right to go and come as they please); **Marcera v. Chinlund** (2d Cir. 1979) 595 F.2d 1231, 1245-1246 (pretrial detainees are presumed to be innocent and therefore have the same rights as unincarcerated persons, except where the exercise of those rights is prohibited by the requirements of security; pretrial detainees are to be subjected 'to no greater restrictions on his liberty than are necessary to ensure either his attendance at trial or the security of the institution in which he is held); **Kincaid v. Rusk** (7<sup>th</sup> Cir. 1982) 670 F.2d 737, 744 fn10 ("least restrictive" approach found helpful where the alleged institutional objective to security and the restriction is overbroad, therefore it was held that pretrial detainees are not convicted prisoners and thus, any overbroad restriction of their freedom may be suspect if not reasonably related to institutional security); **Sandin v. Conner** (1995) 515 US 472, 115 S.Ct. 2293, 2300, 132 L.Ed.2d 418 (detainee may not be punished prior to an adjudication of guilt in accordance with due process of law therefore court expressed concern that a state would attempt to punish a detainee for the crime for which he was inducted via preconviction holding conditions and that such a course would improperly extend the legitimate reasons for which such persons are detained – to ensure their presence at trial)). The same could be said for those undergoing involuntary civil commitment proceedings, therefore punitive intent is inferred.

[4] **U.S. v. Qualls** (9<sup>th</sup> Cir. 1997) 108 F.3d 1019, 1022

[5] The word 'prison' has been defined as a place maintained by a public authority for the detention of those confined under legal process to insure their appearance for further proceedings, or for the confinement of those convicted of criminal offenses and sentenced therefore. (**People v. Upchurch** (1978) 76 Cal.App.3d 721, 723) Atascadero State Hospital (in this example) does not come within this definition. Its purpose is not incarceration of criminals or the detention of those under process to insure court appearance but rather the care, treatment and education of the mentally disordered. (W&IC §§ 4304, 7200.) Atascadero State Hospital falls under the jurisdiction of the Department of Mental Health (W&IC § 4100), not under the Department of Corrections which administers the state prison system. (§§ 2000 et seq., 5003.) Pursuant to Welfare and Institutions Code section 4132, mentally disordered persons are to be treated as patients to be provided care and treatment, not as inmates. [¶] The fact that Atascadero State Hospital is a secure facility housing among its population persons whose commitments arise after the commission of a criminal offense (see W&IC § 6316 (mentally disordered sex offenders); Penal Code § 1026 (those not guilty by reason of insanity); Penal Code § 1370 (persons incompetent to stand trial for a criminal offense), and prisoners transferred from a state prison (Penal Code § 2684), does not render it a 'public prison.' Atascadero State Hospital may have some attributes in common with prisons, but its purpose is not incarceration and it is not a penal institution. [¶] The conclusion that the term 'public prison' does not include Atascadero State Hospital arises from the historical development of the state prisons and state hospitals as separate systems. [¶] The state prison system and state hospital system have remained entirely separate and the purpose of the latter system has remained as the care and education of the mentally disordered. [¶] Since the Legislature has consistently kept the state hospital and state prison systems separate in both name and function from their inception we conclude that it did not intend the term 'public prisons' to include state hospitals.

[6] **County of Sacramento v. Lewis** (1998) 523 US 833, 118 S.Ct. 1708, 1718, citing **City of Revere v Massachusetts General Hospital** (1983) 463 US 239, 244 (the Supreme Court held that pretrial detainees have Due Process rights that are "at least as great" as the 8<sup>th</sup> Amendment protections available to prisoners); **Conn. v. City of Reno** (9<sup>th</sup> Cir. 2009) 591 F.3d 1081, 1094 (although courts have borrowed from Eighth Amendment jurisprudence in giving shape to pretrial detainees' substantive due process rights, that amendment establishes only a minimum standard of care); **Clouthier v. County of Contra Costa** (9<sup>th</sup> Cir. 2010) 591 F.3d 1232, 1242 (held that pretrial detainees' rights under Fourteenth Amendment are comparable to prisoner's rights under the Eighth Amendment)

JUSTICE REQUIRES ETERNAL VIGILANCE



# CITIZENS COMPLAINTS AGAINST HOSPITAL PEACE OFFICERS

*Submitted by: Cory Hoch*

Authorities: California Constitution Art. 5, § 13 (Attorney General has direct supervision over every district attorney and sheriff and other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices); **Chaker v. Crogan** (9th Cir. 2005) 428 F.3d 1215; **Dibb v. County of San Diego** (Cal. 1994) 36 Cal.Rptr.2d 55, 60, 8 Cal.4th 1200 (held that district attorneys office had investigative function and Attorney General had constitutional oversight regarding citizens complaints against peace officers); Government Code §§ 12550 (Attorney General has direct supervision over the district attorneys of the several counties of the State) and 12560 (Attorney General has direct supervision over the sheriffs of the several counties of the State); DMH Special Order No. 719.03, Complaints against DMH State Hospital Peace Officers; AD 803, Complaints against DMH State Hospital Peace Officers (rev. October 5, 2010); Penal Code §§ 832.5 and 832.7; Title 9, CCR § 4325, Complaints against police officers

Peace officer misconduct triggers a mandatory investigation by the peace officer's employing agency. (**Chaker v. Crogan, supra**, 428 F.3d at 1217). The employing agency would be the California Department of Mental Health.

It is being recommended that individuals may want to direct all of their citizen complaints, in addition to the DMH headquarters, to the Attorney General's Office with a "cc" to appropriate District Attorney's Office. **The following is the contact information necessary:**



State of California  
Department of Justice  
ATTN: **Edmund G. Brown, Jr.**  
1300 I Street  
Sacramento, CA 95814

-or-

State of California  
Department of Justice  
ATTN: **Edmund G. Brown, Jr.**  
Post Office Box 944255  
Sacramento, CA 94244-2550  
(916) 445-9555

AND

Office of the District Attorney  
ATTN: **Elizabeth A. Eagan, D.A.**  
2220 Tulare Street #1000  
Fresno, CA 93721  
(559) 488-3141



## Saint Valentine's Day

### A Holiday Honoring Lovers

It is celebrated February 14 by the custom of sending greeting cards or gifts to express affection. The cards, known as valentines, are often designed with hearts to symbolize love. The holiday probably derives from the ancient Roman feast of Lupercalis (February 15). The festival gradually became associated with the feast day (February 14) of two Roman martyrs, both named St. Valentine, who lived in the 3rd century. St. Valentine has traditionally been regarded as the patron saint of lovers.

## February's Events and People (Creatures) of Note

### Groundhog Day

**February 2 of each year when, according to tradition, the groundhog leaves the burrow where it has been hibernating to discover whether cold winter weather will continue. If the groundhog cannot see its shadow, it presumably remains above ground, ending its hibernation. But if its shadow is visible—that is, if the sun is shining—six more weeks of cold weather will follow, and the animal returns to its burrow. There is no scientific evidence for this belief.**

### PUNXSUTAWNEY PHIL

The most famous forecaster of spring is Punxsutawney Phil, a groundhog who makes his predictions in the town of Punxsutawney, Pennsylvania. No one is quite sure how he gained his fame, but townspeople claim his predictions have been extraordinarily accurate. Every February 2, thousands of people gather in Punxsutawney to await the groundhog's verdict. Other cities also have designated official groundhogs.

### *Chinese New Year*

The date of the Chinese new year is determined by the lunar calendar, so festivities begin with the new cycle of the moon that falls between January 21 and February 19. Each year is named for one of 12 symbolic animals in sequence. The animals, in their sequential order, are the rat, ox, tiger, *hare*, dragon, serpent, horse, ram, monkey, rooster, dog, and boar.

The new year celebration is the most important and the longest of all Chinese festivals, traditionally lasting for two weeks. During this period, towns and villages are decorated with colored lanterns, floral displays, and brightly colored banners emblazoned with new year greetings. Preparations traditionally begin in the home the week before the new year, when families thoroughly clean their houses to symbolically sweep away all traces of misfortune. They also pay off debts, add a new coat of red paint to doors and windowpanes, and decorate the home with flowers. To avoid bad luck, parents warn their children to be on their best behavior and to avoid the use of vulgar expressions. On the evening before the new year, families gather for a feast of various dishes of seafood and dumplings. Each dish has symbolic meaning, often signifying good luck and prosperity. At midnight, families light fireworks to attract the attention of benevolent gods and to frighten away evil spirits. The fireworks last until dawn, although celebrants may sporadically light more fireworks for the next two weeks.

On the first day of the new year, people put on new clothes to symbolize the discarding of the old year and its misfortunes. Then they take gifts to friends and relatives. The gifts usually include special rice flour cakes and fruits such as kumquats and oranges. Many adults, particularly married ones, also follow an ancient custom of giving small red packets of money (called *hung-pao* or *lay shee*) to children, unmarried adults, and employees or servants.

Among the most spectacular festivities of Chinese new year are the dragon and lion dances. As many as 50 or more people support long paper dragons and lions while dancing in processions down city streets. The dancers perform to the beating of gongs and drums, while other celebrants perform acrobatic displays. Some of the performers may occasionally reach up to take red money packets or fruits and vegetables hung from storefronts. The celebrations end with the lantern festival, an event in which merchants hang lighted paper lanterns outside their shops. Many of the lanterns rotate with the heat of the candles they contain. Children often parade through the streets during the lantern festival, carrying lanterns of various shapes and patterns.

### February Presidential Birthdays

*George Washington*    *February 22, 1732*

*Abraham Lincoln*    *February 12, 1809*

*Ronald Wilson Reagan*    *February 6, 1911*

# The Venting Zone

## If It Aint Broke, Break it!

*By Daniel Cebada*

I was enrolled in a group called "thinking about your thinking" which is designed to help you be aware of thinking errors and other thought processes that can get you into trouble, among other things. The group started well, with an open and receptive atmosphere by staff and patients alike and a curriculum that was sensible and (to me, at least) beneficial. After only a few sessions, the original group facilitator had to leave due to her having a heavy caseload. A new facilitator [Kathleen Shannon] then took over the group. She promptly discarded the existing curriculum (which had already been in use for at least several quarters) and replaced it with a curriculum that was clearly oriented toward substance abuse. Several patients immediately voiced concerns about the new curriculum, myself included. I specifically pointed out that a show of hands indicated that about half the group didn't have substance abuse issues and that the cover of the curriculum book read "Mapping a life of recovery & freedom for chemically dependent criminal offenders". Several of us were concerned that the class was being transformed into a substance abuse group. Apparently, sensing a mutiny on her hands, the facilitator tried to pacify the group with a smokescreen of jargon, stating that we could use the term "maladaptive coping behavior" (whatever *that's* supposed to mean) instead of "addiction" if it would make us feel better. Undaunted by a dazzling display of psychobabble, I continued to press her, saying that changing the name of something doesn't change what it is.

The facilitator had apparently had enough of this upstart patient questioning her authority and politely informed me that despite everyone's concerns, this was the curriculum she was going to use and that if I didn't like it, I could find another group. The co-facilitator decided to weigh in on the matter by making a sarcastic reference to one of the "criminal thought error tactics" and dismissing my concerns about the group as mere quibbling over semantics. After that, I left the group and, let me tell you, I won't be going back.

The problems with this sudden change in the class were many. First off, the book was geared toward "criminal offenders" in a penal setting. I question how appropriate this is for civil detainees in a civil setting. Second, the book is, according to its own title, intended for substance abusers. When pressed on this point, the co-facilitator tried lamely to force-fit every example of negative thought patterns into the definition of addiction. I'm sorry, but I don't buy into the psychological claptrap of everything is addiction and addiction is everything. Just another example of DMH's "one size fits all" mental health philosophy. Third, the attitudes of the new facilitators were very *unreceptive*, preferring an authoritarian, "my way or the highway" approach to the group. I haven't been in a lot of groups, but that just seems wrong somehow.

So there you have it. A perfectly good group that many of its members have returned to even after completing because it was so beneficial to them was turned on its ear and transformed into something else. Why? Well, apparently it was working too well and you know what they say in DMH. If it ain't broke...

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## WE ARE ABLE TO BE OF USE HERE AT CSH!

*By Robert John William Wright*

There are some people that think that a Mentally Disordered Offender (MDO) is not fit to be on the hospital wide advisory council (the CDAC). They think that we will mess everything up here at the hospital.

I want to say that the MDO part of this hospital population can be of some use here at Coalinga State Hospital. I want to stress to everyone that we all have minds and we can think for ourselves. Some people here would like nothing better than seeing me fail and/or resign. This won't happen, because I already know all about the stresses of this job.

I hope that the population will help me by not causing problems for me and letting me do the will of the people here.

I want to express my thanks to everyone here at CSH who have given me this chance to work for them.



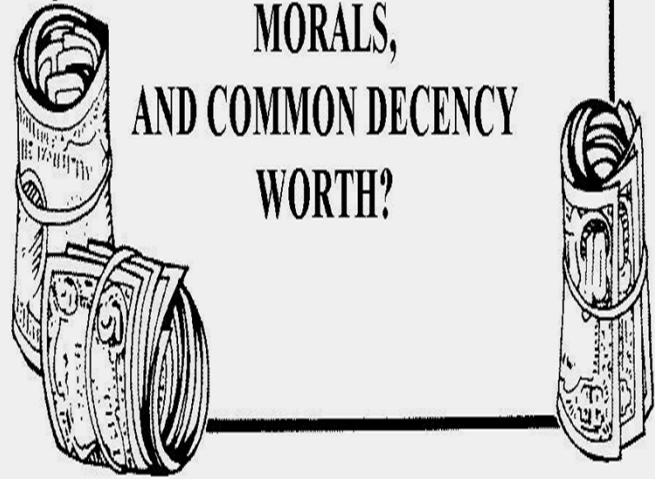
## *What Do You Think?*

I disapprove of what you say, but I will defend to the death your right to say it.

Attributed to Voltaire, the words are in fact S. G. Tallentyre's summary of Voltaire's attitude towards Helvétius, following the ban on De l'Esprit in 'The Friends of Voltaire' (1907) p. 199

# ATTENTION!!!

WHAT ARE YOUR ETHICS,  
MORALS,  
AND COMMON DECENCY  
WORTH?



*Let' us remember all those who have fallen since the beginning of this law and pray that they now know the freedom that was denied them in life...*

Robert Cloverdance; Carl Coleman; Jim Davis; Don Lockett; David Stansberry; Charles Rogers; Larry Goddard; Ed Samradi; Dean Danforth; Craig Rauwens; Wayne Graybeal; Donald Hughes; Lloyd Johnson; Robert Alperin; Tim McClanahan; Patrick Brim; Wayne Porter; Cash O'Doyd; Elmer Bock; Dave Goenick; Jose Vlahoitis; Corwin Weltey; Ross Washington; Richard Bishop; Alton Robinson; Robert Canfield; Jerry Sanchez; Gerald Brooks; James Aceves; Frank Valadao; Donovan Myrick; Paul Real; Paul Pedersen; Kenneth Edmonton; Jimmy Guthrie; James Rosenberg; Charles Grecien; David Harney; James Wallace; Jare Stevens; John Martinez; Delbert Smith; Dennis Boyer; Ruben Garcia; Wilbur Perryman; David Montgomery; William Laughlin; Richard Garcia; Francis Hansen; Steve Mendoza; Robert Berry; Ramon Malbrough; Lee Gebhart (2972 Commitment); and Vernon Madden (01-18-11).